

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

KYLE AVERY,  
CDCR #E-67897,

Plaintiff,

vs.

D. PARAMO; FRANK RUFFINO;  
JEFFREY BEARD; J. LOZANO;  
KATHLEEN L. DICKINSON; TERRI  
McDONALD; KATHLEEN ALLISON;  
M.D. STAINER; T.L. GONZALEZ;  
ALBERT CHAMBERLIN; ALAN  
KHAN; F. HADJADJ; G. BRADFORD;  
K. POOL; RUTLEDGE; GARAY;  
JONES; CARTER; HODGE;  
ALLAMBY; BENYARD; and JOHN  
DOES 1-10, CSP-RJDCF's Religious  
Review Committee,

Defendants.

Civil No. 13cv2261 BTM (DHB)

**ORDER:**

**1) GRANTING DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT AS TO PLAINTIFF'S  
RETALIATION CLAIMS BASED  
ON HIS FAILURE TO EXHAUST  
PURSUANT TO Fed.R.Civ.P. 56  
AND 42 U.S.C. § 1997e(a)  
(ECF No. 32)**

**AND**

**2) SUA SPONTE DISMISSING  
UNIDENTIFIED AND UNSERVED  
DOE DEFENDANTS PURSUANT  
TO Fed.R.Civ.P. 4(m)**

**I.**

**Introduction**

Kyle Avery ("Plaintiff"), currently incarcerated at Richard J. Donovan Correctional Facility ("RJD") in San Diego, California, is proceeding pro se, in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Plaintiff seeks monetary damages against a host of California Department of Corrections and Rehabilitation (“CDCR”) and RJD officials, based on allegations that they have violated his First and Fourteenth Amendment rights to free exercise of religion, equal protection, and to be free of retaliation. *See* Compl. at 42-54, 56-58, 59-64. Plaintiff further seeks injunctive relief under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). *See* Compl. at 27, 55, 66-69. Specifically, Plaintiff contends Defendants have denied him various religious accommodations, including a fence-line, fresh herbs, and running water for use in and around ceremonial cites, as well as a diet sufficient to permit fasting rituals, which he argues are provided to inmates of other faiths. *Id.* at 28-41. Plaintiff further claims Defendants have retaliated against him for his advocacy and use of the administrative grievance process to protect his rights. *Id.* at 48-50, 59-64.

## **II. Procedural Background**

On June 3, 2014, the Court granted Plaintiff leave to proceed *in forma pauperis* pursuant to 42 U.S.C. § 1915(a), granted Plaintiff’s Motion to Voluntarily Dismiss Defendant Khan, and directed the U.S. Marshal to effect service upon the remaining Defendants. *See* June 3, 2014 Order (ECF No. 9). On June 16, 2014, Plaintiff filed an additional Notice of Voluntary Dismissal as to Defendants Garay, Jones, and Hodge pursuant to FED.R.CIV.P. 41(a)(1) (ECF No. 12).

On September 3, 2014, the remaining Defendants<sup>1</sup> Allamby, Allison, Beard, Benyard, Bradford, Carter, Chamberlin, Dickinson, Gonzalez, Hadjadj, Lozano, Pool, McDonald, Paramo, Ruffino, Rutledge, and Stainer filed a pre-Answer Motion for Summary Judgment pursuant to FED.R.CIV.P. 56 based on Plaintiff’s alleged failure

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<sup>1</sup> While Plaintiff’s Complaint also “includes space to supplement” ten members of RJD’s Religious Review Committee (“RRC”) as John Doe Defendants, *see* Compl. at 15, he has failed to identify those Does and has failed to execute service upon them within the 120 days provided by FED.R.CIV.P. 4(m). Because the Court gave notice to Plaintiff of his obligations in this regard in its June 13, 2014 Order, *see* ECF No. 9 at 7 n.3, and he has since failed to show good cause for his failure to timely identify and serve these purported parties, they may be dismissed sua sponte pursuant to FED.R.CIV.P. 4(m). *See Crowley v. Bannister*, 734 F.3d 967, 975-76 (9th Cir. 2013).

1 to exhaust administrative remedies as his retaliation claims (ECF No. 32).<sup>2</sup> Both the  
 2 Court and Defendants provided Plaintiff with notice of Defendants' Motion and  
 3 advised him of his obligation to submit evidence in response pursuant to *Rand v.*  
 4 *Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) and *Marella v. Terhune*,  
 5 568 F.3d 1024, 1028 (9th Cir. 2009) (ECF Nos. 32-2, 33). Plaintiff thereafter filed his  
 6 Motion in Objection (hereafter "Pl.'s Opp'n") (ECF No. 34), to which Defendants  
 7 have filed their Reply (ECF No. 35).

8 Having carefully reviewed these submissions, including all evidence offered in  
 9 both support and in opposition to Defendants' Motion, and having determined that no  
 10 oral argument is necessary pursuant to S.D. CAL. CIVLR 7.1.d.1, the Court hereby  
 11 GRANTS Defendants' Motion for Summary Judgment pursuant to FED.R.CIV.P 56 as  
 12 to Plaintiff's retaliation claims (ECF No. 32) for the reasons set out below.

### 13 **III. Plaintiff's Allegations**

14 Plaintiff alleges he is Pagan-Wiccan, and holds a "sincere religious belief" in  
 15 the "earth-based" religious practices of the Wiccan & Asatru faiths, including  
 16 "ceremonial magick." *See* Compl., ECF No. 1, at 11,17, 20, 25, 26, 35, 36, 38-42.  
 17 He divides his Complaint into five separate claims.

18 First, Plaintiff claims Defendants Paramo, Ruffino, Lozano, Bradford, Hadjadj,  
 19 Beard, Pool, Dickinson, McDonald, Allison, Stainer, Gonzalez, and Chamberlin have  
 20 denied his First Amendment right to free exercise of his religion by refusing to  
 21 accommodate requests, made on behalf of himself, and other members of the  
 22 Pagan/Wiccan/Asatru population on RJD's Facility C, for a fence perimeter, fire pit,  
 23 water line, and herb cultivation, which Plaintiff contends are required and "imperative  
 24 to honor the religious ceremonies and rituals" of their faith. *Id.* at 17-22, 28-32, 42-  
 25 44, ("Claim One").

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26  
 27 <sup>2</sup> Defendants have also filed a Motion to Consolidate this case, *Avery v.*  
 28 *Paramo, et al*, S.D. Cal. Civil Case No. 13cv2261 BTM (DHB), with a later-filed, yet  
 similar civil action filed by Plaintiff in *Avery v. Allamby, et al.*, S.D. Cal. Civil Case  
 No. 13cv3169 BTM (DHB) (ECF No. 37). The Court will consider that Motion in a  
 separate Order.

Second, Plaintiff alleges Defendant Paramo, Ruffino, Lozano, Beard, Pool, Carter, Rutledge, and Benyard's<sup>3</sup> failure to provide the accommodations requested in Claim One is "discriminatory" and violates the Equal Protection Clause of the Fourteenth Amendment because Native American inmates are provided similar religious accommodations which Wiccans and Asatru practitioners are denied. *Id.* at 20-22, 45-50 ("Claim Two").

Third, Plaintiff contends Defendants Beard, Hadjadj, Ruffino, Bradford, Paramo, Pool, and Lozano<sup>4</sup> violated his First Amendment right to free exercise of his religion by refusing to accommodate his religious fasting practices. *Id.* at 35-41, 51-54. Specifically, Plaintiff alleges these Defendants have denied his requests for a monthly supply of honey, nuts, dried fruit, trail mix and "non-yeast (or) ergot bread or crackers," which are "non-fermentable items [needed] to sustain [his] physical health" during the "24 ... to 72 hours prior to ceremonies and magical practices of ritual magick." *Id.* at 35-36. Plaintiff claims that without these "specific accommodations," he has been "forced to abandon the tenets of his fasting religious practices or starve." *Id.* at 38, 51-54 ("Claim Three").

Fourth, Plaintiff seeks injunctive relief under RLUIPA as to "all Defendants" in their official capacities, based on claims that their refusals to provide him with "security in religious practices ... contingent ... upon the erection of a fence line," (Claim One) or to accommodate his requested religious dietary needs (Claim Three), have "caused [him] to abandon" his sincerely held religious practices against his will. *See Compl.* at 55 ("Claim Four").

Fifth, Plaintiff claims that Defendant Beard, who is the Secretary of the CDCR, has violated his First, Fourteenth, and RLUIPA rights by "delegating responsibility"

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<sup>3</sup> Plaintiff originally included Defendants Khan, Jones, Garay, and Hodge in this claim, but they have since been dismissed them as parties. *See* ECF Doc. Nos. 8, 9, 12.

<sup>4</sup> Defendant Khan was originally included in this claim, but Plaintiff has voluntarily dismissed him. *See* ECF Doc. Nos. 8, 9.

1 to “create regulations and policy concerning religious accommodations and program  
 2 for inmates in CDCR’s jurisdiction,” to the Inmate Appeals Branch, Wardens  
 3 Advisory Group (“WAG”), and the Religious Review Committee (“RRC”), *see*  
 4 Compl. at 11, 13, and by “refusing to create” and/or include in Title 15 of the  
 5 California Code of Regulations, or the CDCR’s Operations Manual (“DOM”),  
 6 policies or language which would protect the free exercise and equal access rights of  
 7 Pagan/Wiccan/Asatru practices by explicitly including them in the “earth-based”  
 8 practices already recognized for Native American inmates. *Id.* at 56-58 (“Claim  
 9 Five”).

10 Finally, Plaintiff claims that he has acted as an “advocate” on his own and on  
 11 behalf of the “Wiccan & Asatru class” of inmates at RJD “at their request,” “via  
 12 exhaustion of administrative remedies,” and by pursuing “legal review by the courts”  
 13 since he arrived there on March 28, 2012. *See* Compl. at 59; Olson Decl. ¶ 5. He  
 14 claims Defendants Carter, Rutledge, Allamby, Paramo, Benyard, Ruffino, and others<sup>5</sup>  
 15 either retaliated against him directly by “interrogating” him and “threatening” him  
 16 with discipline in order to “intimidat[e]” or “discourage” him from filing group  
 17 inmate appeals, or by failing to properly train, supervise, or discipline their  
 18 subordinate staff for retaliating against him. *See* Compl. at 59-64 (“Claim Six”).

19 Claims One, Two, and Four, in which Plaintiff alleges violations of RLUIPA,  
 20 his First Amendment right to free exercise, and his Fourteenth Amendment right to  
 21 equal protection in relation to his requests for a Pagan/Wiccan/Asatru fence  
 22 perimeter, fire pit, water line, and herb cultivation, all appear to have been properly  
 23 exhausted via Plaintiff’s CDCR 602 “Group Appeal,” RJD Log No. 12-1960, filed on  
 24 July 4, 2012, and denied at the third level of administrative review on June 14, 2013.  
 25 *See* Compl., ECF No. 1-1, Pl.’s Ex. 2 at 24-47.

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 28 <sup>5</sup> Plaintiff also includes Defendants Khan, Garay, Hodge, and Jones in his  
 retaliation claim, but all those parties have been voluntarily dismissed. *See* ECF Nos.  
 8, 9, 12.

1 Claim Three, in which Plaintiff alleges violations of both RLUIPA and his First  
 2 Amendment right to free exercise in relation to his dietary fasting needs, appears to  
 3 have been properly exhausted via Plaintiff's CDCR 602 Inmate/Parolee Appeal, RJD  
 4 Log No. 12-02497, filed on August 27, 2012, and also denied at the third level of  
 5 administrative review on June 14, 2013. *See* Compl., ECF No. 1-1, Pl.'s Ex. 1 at 1-23;  
 6 *see also* Briggs Decl., Ex. C, at 28-29, RJD Log No. 12-2460, Third Level Appeal  
 7 Decision dated June 5, 2013.

8 Claim Five, in which Plaintiff challenges Secretary Beard's failure to enact or  
 9 promulgate state-wide policies which specifically include Pagan/Wiccan/Asatru  
 10 practices as within other "earth-based" religious programs specified within Title 15  
 11 and the DOM on First and Fourteenth Amendment grounds, also appears to have been  
 12 properly exhausted via Plaintiff's CDC 602 Inmate/Parolee Appeal, RJD Log No. 13-  
 13 01171, filed on March 25, 2013, and denied at the third level of administrative review  
 14 on August 8, 2013. *See* Compl., ECF No. 1-1, Pl.'s Ex. 3 at 48-56.

#### 15 **IV. Defendants' Motion for Summary Judgment**

16 While Defendants concede Plaintiff "has exhausted the prison appeals process  
 17 for his claims related to a fenced-in worship area and a supply of nuts and honey,"  
 18 they seek summary judgment as to Plaintiff's claims of retaliation ("Claim Six")  
 19 based on his failure to properly exhaust them before filing suit. *See* Defs.' Mem. of  
 20 P&As in Supp. of Summ. J (ECF No. 32) at 6.

#### 21 **A. Legal Standards**

##### 22 **1. Statutory Exhaustion Requirement**

23 Pursuant to the Prison Litigation Reform Act of 1995, "[n]o action shall be  
 24 brought with respect to prison conditions under [42 U.S.C. § 1983], or any other  
 25 Federal law, by a prisoner confined in any jail, prison, or other correctional facility  
 26 until such administrative remedies as are available are exhausted." 42 U.S.C.  
 27 § 1997e(a). This statutory exhaustion requirement applies to all inmate suits about  
 28 prison life, *Porter v. Nussle*, 534 U.S. 516, 532 (2002) (quotation marks omitted),



1 regardless of the relief sought by the prisoner or the relief offered by the process.  
 2 *Booth v. Churner*, 532 U.S. 731, 741 (2001).

3 “Proper exhaustion demands compliance with an agency’s deadlines and other  
 4 critical procedural rules[.]” *Woodford v. Ngo*, 548 U.S. 81, 90 (2006). The Supreme  
 5 Court has also cautioned against reading futility or other exceptions into the statutory  
 6 exhaustion requirement. *See Booth*, 532 U.S. at 741 n.6. Moreover, because proper  
 7 exhaustion is necessary, a prisoner cannot satisfy the PLRA exhaustion requirement  
 8 by filing an untimely or otherwise procedurally defective administrative grievance or  
 9 appeal. *See Woodford*, 548 U.S. at 90-93. Instead, “to properly exhaust administrative  
 10 remedies prisoners ‘must complete the administrative review process in accordance  
 11 with the applicable procedural rules,’[ ]-rules that are defined not by the PLRA, but  
 12 by the prison grievance process itself.” *Jones v. Bock*, 549 U.S. 199, 218 (2007)  
 13 (quoting *Woodford*, 548 U.S. at 88). *See also Marella*, 568 F.3d at 1027 (“The  
 14 California prison system’s requirements ‘define the boundaries of proper  
 15 exhaustion.’”) (quoting *Jones*, 549 U.S. at 218).

16 Because the failure to exhaust is an affirmative defense, Defendants bear the  
 17 burden of raising and proving its absence. *Jones*, 549 U.S. at 216; *Albino v. Baca*,  
 18 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc). “In the rare event that a failure to  
 19 exhaust is clear from the face of the complaint, a defendant may move for dismissal  
 20 under Rule 12(b)(6).” *Albino*, 747 F.3d at 1166. Otherwise, Defendants must produce  
 21 evidence proving the Plaintiff’s failure to exhaust, and they are entitled to summary  
 22 judgment under Rule 56 only if the undisputed evidence, viewed in the light most  
 23 favorable Plaintiff, shows he failed to exhaust. *Id.*

## 24 **2. Rule 56 Summary Judgment**

25 Any party may move for summary judgment, and the Court must grant  
 26 summary judgment if the movant shows that there is no genuine dispute as to any  
 27 material fact and the movant is entitled to judgment as a matter of law. FED.R.CIV.P.  
 28 56(a) (quotation marks omitted); *Albino*, 747 F.3d at 1166; *Washington Mut. Inc. v.*

1 *U.S.*, 636 F.3d 1207, 1216 (9th Cir. 2011). Each party’s position, whether it be that a  
 2 fact is disputed or undisputed, must be supported by: (1) citing to particular parts of  
 3 materials in the record, including but not limited to depositions, documents,  
 4 declarations, or discovery; or (2) showing that the materials cited do not establish the  
 5 presence or absence of a genuine dispute or that the opposing party cannot produce  
 6 admissible evidence to support the fact. FED.R.CIV.P. 56(c)(1) (quotation marks  
 7 omitted). The Court may consider other materials in the record not cited to by the  
 8 parties, although it is not required to do so. FED.R.CIV.P. 56(c)(3); *Carmen v. San*  
 9 *Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001); *accord Simmons*  
 10 *v. Navajo Cnty., Ariz.*, 609 F.3d 1011, 1017 (9th Cir. 2010).

11 When Defendants seek summary judgment based on the Plaintiff’s failure to  
 12 exhaust specifically, they must first prove that there was an available administrative  
 13 remedy and that Plaintiff did not exhaust that available remedy. *Williams v. Paramo*,  
 14 775 F.3d 1182, 1191 (9th Cir. 2015) (citing *Albino*, 747 F.3d at 1172) (quotation  
 15 marks omitted). If they do, the burden of production then shifts to the Plaintiff “to  
 16 come forward with evidence showing that there is something in his particular case  
 17 that made the existing and generally available administrative remedies effectively  
 18 unavailable to him.” *Williams*, 775 F.3d at 1191.

19 “If the undisputed evidence viewed in the light most favorable to the prisoner  
 20 shows a failure to exhaust, a defendant is entitled to summary judgment under Rule  
 21 56.” *Albino*, 747 F.3d at 1166. However, “[i]f material facts are disputed, summary  
 22 judgment should be denied, and the district judge rather than a jury should determine  
 23 the facts.” *Id.*

## 24 **B. Discussion**

25 In this case, no party disputes that the CDCR “has an administrative remedy”  
 26 for inmate grievances. *See Williams*, 775 F.3d at 1191. No party further disputes that  
 27 California’s administrative grievance procedure is initiated by submitting a CDCR  
 28 Form 602 “Inmate/Parolee Appeal” within thirty calendar days: (1) of the event or



1 decision being appealed, (2) upon first having knowledge of the action or decision  
 2 being appealed, or (3) upon receiving an unsatisfactory departmental response to an  
 3 appeal filed. *See* CAL. CODE REGS., tit. 15, §§ 3084.2(a), 3084.8(b)(1) (quotation  
 4 marks omitted); *Vaden v. Summerhill*, 449 F.3d 1047, 1049 (9th Cir. 2006); *see also*  
 5 Decl. of R. Briggs in Supp. of Defs.’ Mot. for Summ. J. (ECF No. 32-4) (hereafter  
 6 “Briggs Decl.”) at 2-3 ¶¶ 2-6.

7 A California prisoner may appeal “any policy, decision, action, condition, or  
 8 omission by the department or its staff that [he] can demonstrate as having a material  
 9 adverse effect upon his ... health, safety, or welfare.” CAL CODE REGS., tit. 15  
 10 § 3084.1(a). Since January 28, 2011, and during the times alleged in Plaintiff’s  
 11 Complaint, Title 15 of the California Code of Regulations requires three formal levels  
 12 of appeal review. *See* Decl. of R. Olson in Supp. of Defs.’ Mot. for Summ. J. (ECF  
 13 No. 32-3) at 2 ¶ 2.

14 Thus, in order to properly exhaust, Plaintiff must, within 30 calendar days of  
 15 the decision or action being appealed, or “upon first having knowledge of the action  
 16 or decision being appealed,” CAL. CODE REGS., tit. 15 § 3084.8(b), “use a CDCR  
 17 Form 602 (Rev. 08/09), Inmate/Parolee Appeal, to describe the specific issue under  
 18 appeal and the relief requested.” *Id.* § 3084.2(a). The CDCR Form 602 “shall be  
 19 submitted to the appeals coordinator at the institution.” *Id.* § 3084.2(c), § 3084.7(a).  
 20 If the first level CDCR Form 602 appeal is “denied or not otherwise resolved to the  
 21 appellant’s satisfaction at the first level,” *id.* § 3084.7(b), Plaintiff must “within 30  
 22 calendar days ... upon receiving [the] unsatisfactory departmental response,” *id.* §  
 23 3084.8(b)(3), seek a second level of administrative review, which is “conducted by  
 24 the hiring authority or designee at a level no lower than Chief Deputy Warden, Deputy  
 25 Regional Parole Administrator, or the equivalent.” *Id.* § 3084.7(b), (d)(2). “The third  
 26 level is for review of appeals not resolved at the second level.” *Id.* § 3084.7(c). “The  
 27 third level review constitutes the decision of the Secretary of the CDCR on an appeal,  
 28 and shall be conducted by a designated representative under the supervision of the

1 third level Appeals Chief or equivalent. The third level of review exhausts  
 2 administrative remedies,” *id.* § 3084.7(d)(3), “unless otherwise stated.”<sup>6</sup> *Id.* §  
 3 3084.1(b); *see also* Olson Decl. ¶¶ 2-3.

4 Therefore, the only question in this case is whether Defendants have carried  
 5 their burden under Rule 56 to show there is no material dispute as to whether Plaintiff  
 6 did, in fact, exhaust available administrative remedies as to the retaliation claims he  
 7 alleges in Claim Six of his Complaint against Defendants Carter, Rutledge, Allamby,  
 8 Benyard, Paramo, and Ruffino before filing suit as is required by CAL. CODE REGS.,  
 9 tit. 15 § 3084, et seq. *See* Compl. at 59-64; *Williams*, 775 F.3d at 1191.

### 10 **1. Defendants’ Evidence**

11 In support of their Motion seeking summary judgment as to Plaintiff’s  
 12 retaliation claims, Defendants have submitted the sworn Declarations of R. Olson,  
 13 RJD’s Appeals Coordinator (ECF No. 32-3), and R. Briggs, the CDCR’s Acting  
 14 Chief of the Office of Inmate Appeals (ECF No. 32-4). Both Olson and Briggs attest  
 15 as to the content of the Inmate Appeals Office’s (“IAO”) business records and files  
 16 containing “any appeals, including staff complaints,” filed by Plaintiff from the time  
 17 of his transfer to RJD on March 28, 2012, and “all Third Level Inmate Appeals”  
 18 accepted “relating to allegations of retaliation by current Defendants in this action for  
 19 practicing his religion and advocating for his religious group by filing appeals.”  
 20 Olson Decl. ¶ 5; Briggs Decl. ¶ 8. Attached to Briggs’s Declaration are copies of ten  
 21 CDCR Form 602 Inmate grievances, filed by Plaintiff at RJD between October 1,  
 22 2012, and August 17, 2013, which he exhausted through the third level of

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26 <sup>6</sup> For example, “[a] second level of review shall constitute the department’s  
 27 final action on appeals of disciplinary actions classified as ‘administrative’ as  
 28 described in section 3314, or minor disciplinary infractions documented on CDC  
 Form 128-A (rev. 4-74), Custodial Counseling Chrono, pursuant to section  
 3312(a)(2), and shall exhaust administrative remedy on these matters.” CAL. CODE  
 REGS., tit. 15 § 3084.7(b)(1).

1 administrative review. *See* Briggs’ Decl. at 4-6, ¶ 9(a)-(j) & Exs. A-J.<sup>7</sup> Defendants  
 2 offer these to show that while Plaintiff’s “religious appeals,” specifically those  
 3 “related to his requests for fenced-in worship area and a monthly supply of honey  
 4 nuts and fruit,” were properly exhausted, *see* Defs.’ Mem. of P&As’ in Supp. of  
 5 Summ. J. at 32, citing Briggs’ Decl., Ex. A (RJD Log No. 12-1960), Ex. C (RJD Log  
 6 No. 12-2460), and Ex. D (RJD Log No. 12-2497), none of these appeals, or any other  
 7 filed by Plaintiff through the third level of administrative review, included allegations  
 8 sufficient to put prison officials “on notice” that he was *also* claiming retaliation by  
 9 any Defendant still named as a party to this action. *Id.* at 14-17 (citing *Griffin v.*  
 10 *Arpaio*, 557 F.3d 1117, 1121 (9th Cir. 2009)).

11 Both Olson and Briggs’s Declarations also include descriptions of more than a  
 12 dozen additional CDCR Form 602 grievances initiated by Plaintiff during the same  
 13 time, which were withdrawn, abandoned, “screened out,” “rejected,” “cancelled,” or  
 14 otherwise “not accepted” pursuant to CAL. CODE REGS., tit. 15 § 3084.6. *See* Olson  
 15 Decl. ¶ 7(a)-(m); Briggs Decl. ¶ 10(a)-(f). Also attached to Olson’s Declaration are  
 16 copies of the only two of Plaintiff’s appeals which Olson attests *did* include  
 17 allegations of retaliation: RJD Log. No. 13-1816 and RJD Log No. 13-2820. *See*  
 18 Olson Decl. ¶ 6(m) & Ex. 1 at 15-37 ; *id.* ¶ 7(j) & Ex. 2 at 39-46. Both these appeals  
 19 were “screened out” or “withdrawn,” however. *Id.* Therefore, Defendants offer them  
 20 as proof that because neither was pursued through the third level of administrative  
 21 review, as required by CAL. CODE REGS., tit. 15 § 3084.1(b) and § 3084.7(d)(3),  
 22 neither is sufficient to show Plaintiff “properly” exhausted his administrative

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 24  
 25 <sup>7</sup> These CDCR Form 602 Appeals were “accepted and processed,” *see* Briggs  
 26 Decl. ¶ 9(a)-(j), and designated RJD Log No. 12-1960, (*id.*, Ex. A at 9-18); Log No.  
 27 12-2967, (*id.*, Ex. B at 19-26); Log No. 12-2460, (*id.*, Ex. C at 27-41); Log. No. 12-  
 28 2497, (*id.*, Ex. D at 42-49); Log No. 13-1171, (*id.*, Ex. E at 50-57); Log No. 13-0896,  
 (*id.*, Ex. F at 58-68); Log No. 13-1165, (*id.*, Ex. G at 69-76); Log No. 13-2005, (*id.*,  
 Ex. H at 77-87); Log No. 13-1198, (*id.*, Ex. I at 88-95); Log No. 13-3017, (*id.*, Ex. J  
 at 96-110). *See also* Briggs’s Decl. Ex. K at 111-115, Inmate/Parolee Appeals  
 Tracking System - Level III (“IATS”), for Kyle Avery, CDCR #E-67897.

1 remedies as to any claims of retaliation. *See Jones*, 549 U.S. at 218 (quoting  
2 *Woodford*, 548 U.S. at 88).

## 3                   **2.       Plaintiff's Rebuttal Evidence**

4           In his Opposition, Plaintiff does *not* rebut Defendants' evidence or argue that  
5 screened out CDCR 602 Appeal Log No. 13-1816 or Log No. 13-2820 were, in fact,  
6 sufficient to demonstrate proper exhaustion. *See* Pl.'s Opp'n (ECF No. 34). Nor does  
7 Plaintiff claim or offer any of his own evidence to show that the grievance procedure  
8 was rendered unavailable to him as to these incomplete appeals. *See Williams*, 775  
9 F.3d at 1191-92. Instead, Plaintiff claims he exhausted his claims by giving "judicial  
10 notice of retaliations to Defendants D. Paramo and CRM Ruffino" in a letter he  
11 presented to them on April 5, 2013, which included claims of both past and  
12 "anticipated" future interference by RJD custodial staff with his "intent to exercise  
13 protected conduct and to advocate and litigate." *See* Pl.'s Opp'n (ECF No. 34) Ex. 3  
14 at 148-153. Plaintiff further claims two other CDCR 602 appeals, RJD Log No. 13-  
15 2451, filed on August 6, 2013, and RJD Log. No. 13-3017, filed on September 22,  
16 2013, are "in conjunction" also sufficient to show his retaliation claims were properly  
17 exhausted. *See* Pl.'s Opp'n at 10 & Exs. 1 & 2.

### 18                   **a.       Plaintiff's Letter**

19           First, to the extent Plaintiff contends an April 5, 2013 letter he wrote to  
20 Defendants Paramo and Ruffino is sufficient to show proper exhaustion of his  
21 retaliation claims, Article 8 of CAL. CODE REGS., tit. 15, § 3084 through § 3084.9  
22 provide otherwise. *See* § 3084.1 ("The appeal process is intended to provide a remedy  
23 for inmates ... with identified grievances and to provide an administrative mechanism  
24 for review of departmental policies, decisions, actions, conditions, or omissions that  
25 have a material adverse effect on the welfare of inmates and parolees."); *Jones*, 549  
26 U.S. at 218 ("proper exhaustion" occurs when prisoners "complete the administrative  
27 review process in accordance with the applicable procedural rules' ... that are defined  
28

1 not by [§ 1997e(a)], but by the prison grievance process itself.”) (quoting *Woodford*,  
2 548 U.S. at 88).

3 Thus, Plaintiff’s April 5, 2015 letter to the Warden and other prison officials,  
4 which he submits as Exhibit 3 to his Opposition (ECF No. 34, at 148-153), neither  
5 excuses his failure to submit a CDCR Form 602 appeal as to the retaliation claims  
6 alleged in his Complaint, nor does it relieve him from proceeding through all the  
7 administrative steps required to properly exhaust those claims via California’s  
8 grievance process. *See Woodford*, 548 U.S. at 91, 93 (exhaustion under the PLRA  
9 requires “compliance with an agency’s deadlines and other critical procedural rules”);  
10 *Panaro v. City of North Las Vegas*, 432 F.3d 949, 954 (9th Cir. 2005) (participation  
11 in internal affairs investigation did not suffice to exhaust administrative remedies);  
12 *Wilson v. Wann*, No. CIV S-06-1629 GEB KJM P, 2008 WL 4166886, at \*2 (E.D.  
13 Cal. Sept. 8, 2008) (finding plaintiff’s letters to the Office of the Inspector General,  
14 Office of Internal Affairs, and the Warden were insufficient to show exhaustion); *see*  
15 *also Lees v. Felker*, 2009 WL 2824862, \*5 (E.D. Cal. Sept.1, 2009) (noting that  
16 plaintiff’s letter to warden was not an alternative method to the inmate grievance  
17 process for exhausting administrative remedies); *Macias v. Zenk*, 495 F.3d 37, 44 (2d  
18 Cir. 2007) (informal complaints did not exhaust); *Singh v. Goord*, 520 F. Supp. 2d  
19 487, 495 (S.D.N.Y. 2007) (letter to warden did not exhaust).

20 **b. RJD Log No. 13-2451 & RJD Log No. 13-3017**

21 Next, Plaintiff argues that CDCR Form 602 Log No. 13-2451 and CDCR Form  
22 602 Log No. 13-3017 are sufficient to show exhaustion of the retaliation claims  
23 alleged in his Complaint under § 1997e(a) “because retaliation was mentioned” in  
24 those appeals. *See* Pl.’s Opp’n (ECF No. 34) at 7-10. In their Reply, however,  
25 Defendants claim neither of these appeals are sufficient to show proper exhaustion  
26 because they describe “entirely different [acts of] retaliatory conduct” arising at  
27 different times than the retaliatory acts Plaintiff asserts against Defendants Carter,  
28

1 Rutledge, Allamby, Paramo, Benyard, and Ruffino in his Complaint.<sup>8</sup> *See* Defs.’  
 2 Reply (ECF No. 35) at 2-7. The Court agrees.

3 In Claim Six of his Complaint, Plaintiff claims generally that he has been  
 4 “retaliated against by administrative staff, the chaplain[’]s staff, and the prison[’]s  
 5 custodial staff” “since his arrival at RJD,” in an “attempt to dis[]courage” his  
 6 religious advocacy. *See* Compl. at 59. He does give several “examples” of purported  
 7 acts of reprisal involving Defendants Carter, Rutledge, Allamby, and Ruffino, but he  
 8 mentions only one specific date: May 14, 2013. *Id.* at 60.

9 On May 14, 2013, Plaintiff claims Defendant Carter “removed [him] from his  
 10 housing unit,” cuffed him, and escorted him to the Facility C Program Office, where  
 11 he was placed in an “interrogation-type setting” before Muslim Chaplain Khan and  
 12 Defendants Rutledge and Allamby. Plaintiff describes the incident as “an intervention  
 13 team aimed at intimidation.” *Id.* at 60. Plaintiff contends he “was told his 602s and  
 14 advocacy for Wiccans & Asatru was not wanted and [he] was ordered to stop.” *Id.*  
 15 Plaintiff further claims Khan “threatened to write a disciplinary report against [him] if  
 16 he continued to advocate via 602s,” and told him “both the Asatru and Wiccans did  
 17 not desire to have [him] advocating for them,” and, in fact, the “Asatru inmates ...  
 18 wanted to assault [him].” *Id.* at 60, 62. Plaintiff contends he knew this was “false”  
 19 because “numerous Wiccans & Asatru inmates” had signed his “class” grievances,  
 20 *id.*, at 60-61, and because if Plaintiff’s safety was threatened they would “have him  
 21 placed in Ad-Seg.” *Id.* at 62.

22 Plaintiff further claims that “upon submitting” unspecified grievances,  
 23 Defendant Ruffino, RJD’s Community Resource Manager, on a “number of  
 24 individual” occasions, “contacted” unidentified “custody and chaplain staff to have  
 25 them threaten [Plaintiff] with disciplinary actions.” *Id.* at 48. Plaintiff claims  
 26 Ruffino’s actions as an “administrator designee” also “set the impression” with

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27  
 28 <sup>8</sup> As noted above, Plaintiff’s Complaint also includes allegation of retaliation  
 by Defendants Kahn, Garay, Jones, and Hodge, but Plaintiff has voluntarily dismissed  
 those officials as parties in this matter. *See* ECF Nos. 8, 9, 12.



1 custodial staff that other “retaliatory tactics were justified.” *Id.* Plaintiff also describes  
 2 Defendant Correctional Officer Carter as “always approaching him and other Pagan  
 3 inmates in a physically threatening and verbally aggressive fashion,” and that he  
 4 would “desecrate” Pagan religious grounds by “kicking rocks, spitting ..., dislodging  
 5 alter stones ... and destroy[ing] sacred arrangements” in what Plaintiff alleges was “an  
 6 attempt to retaliate against [their] free religious exercise observances and Plaintiff’s  
 7 advocacy for it.” *Id.* at 49. In addition, Plaintiff asserts Sergeant Rutledge “ke[pt]  
 8 telling Pagans ... Plaintiff [wa]s causing this or that problem” in an attempt to “create  
 9 division” and was “constantly reaffirming his staff[’s] confiscation of [Pagans’]  
 10 religious property,” in order to “create discomfort for ... Plaintiff who [was] trying to  
 11 get a better established basis for Pagan programming.” *Id.*

12 Thus, Plaintiff’s only *specific* claims of retaliation are alleged to have occurred  
 13 on May 14, 2013, in RJD’s Facility C Program Office, and involve current  
 14 Defendants Carter, Rutledge, and Allamby. *See* Compl. at 60-63. While his pleading  
 15 also contains global claims of harassment occurring on other unspecified occasions,  
 16 Plaintiff fails to tether those acts, or any other Defendant named in Claim Six, to any  
 17 particular instance of protected conduct. *See Pratt v. Rowland*, 65 F.3d 802, 807-08  
 18 (9th Cir. 1995) (to state a claim for retaliation, Plaintiff must allege a specific link  
 19 between the claimed act of retaliation and the exercise of a constitutional right);  
 20 Compl. at 48-49, 64.

21 Nevertheless, Plaintiff contends he exhausted his retaliation claims by simply  
 22 asking that “it be stopped” in CDCR Form 602 Log No. 13-2451, which he filed on  
 23 August 6, 2013, and in CDCR Form 602 Log No. 13-3017, filed on September 22,  
 24 2013. *See* Pl.’s Opp’n at 9, 17.<sup>9</sup> The Court will consider each in turn.

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25  
 26 <sup>9</sup> Plaintiff also cites CAL. CODE REGS., tit. 15 § 3084.2(a) to show that “the law  
 27 does not require [him] to name each person who retaliated in grievances.” *See* Pl.’s  
 28 Opp’n at 15, 17. While this was formerly true, *see Sapp v. Kimbrell*, 623 F.3d 813,  
 824 (9th Cir. 2010), section 3084.2(a) was amended effective January 28, 2011 to  
 require that prisoners indeed “list all staff member(s) involved,” and “describe their  
 involvement in the issue” in their CDCR Form 602s. *See* CAL. CODE REGS., tit. 15  
 § 3084.2(a) (2014).

1 First, in CDCR Form 602 Log No. 13-2451, Plaintiff challenged the validity of  
 2 a CDCR 128-A Custodial Chrono, issued against him on August 1, 2013, by Lt. A.  
 3 Canada.<sup>10</sup> See Pl.’s Opp’n (EC. No. 34), Ex. 1 at 24. In the CDCR 128-A, Canada  
 4 reported that Plaintiff had violated a “direct order by Correctional Lt. A. Allamby to  
 5 not engage in the transportation ... of the Wiccan religious artifacts to and from the  
 6 ‘C’ Program - ‘C’ Chapel.” *Id.*, Ex. 1 at 56. Canada issued the CDC 128-A to Plaintiff  
 7 as a “written warning that further violations to the direct orders given to him,”  
 8 “pursuant to the adjudication of Rules Violation Report (“RVR”) Log #FC-13-245,”  
 9 would “result in a more progressive disciplinary action [being] taken.” *Id.*

10 In his CDCR Form 602, Plaintiff requested that Canada’s “128-A custodial  
 11 chrono [be] vacated and completely removed from [his] C-File,” because the “items  
 12 [at] issue [were] [his] personal religious property,” that he had “authorization to  
 13 convey the religious property by checking them out as needed for [Wiccan] services  
 14 & or personal use,” and that neither Lt. Canada nor Allamby were “at liberty to  
 15 dictate” whether Plaintiff may act as “a legal lia[i]s[o]n” or “advocate for [him]self  
 16 and [his] Wiccan or Pagan class.” *Id.* at 25. Plaintiff cited both his “First Amendment  
 17 right,” and his “protected conduct right” as an “advocate for [his] class,” and  
 18 concluded by requesting “staff stop fishing for reasons to retaliate via RVR & 128s.”  
 19 *Id.*

20 On August 17, 2013, Correctional Lieutenant J. Clarke interviewed Plaintiff  
 21 regarding the claims he raised in CDCR Form 602 Log. No. 13-2451. G. Stratton, on  
 22 behalf of Defendant Warden Paramo,<sup>11</sup> found that because Plaintiff had been found  
 23 guilty of falsifying state records by Lt. Allamby on May 28, 2013, as charged in  
 24 Rules Violation Report Log No. FC-13-245, and as a result had been “removed from  
 25 the position of Wiccan Representative/Liaison in charge of religious artifacts,”

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26  
 27 <sup>10</sup> Canada is not named as a Defendant in this case and Plaintiff’s Complaint  
 includes no mention of him.

28 <sup>11</sup> Neither Clarke nor Stratton are named as Defendants in this case and  
 Plaintiff’s Complaint also includes no mention of them.

1 Canada's 128-A was "appropriate." Therefore, Plaintiff's CDCR Form 602 Appeal  
2 Log. No. 13-2451 was denied at the second level of review. *Id.* at 53-55.<sup>12</sup>

3 On August 20, 2013, Lieutenant J. Clarke issued Plaintiff another RVR, CDC  
4 115 Log No. FC-13-446, this time charging him with disobeying orders in violation  
5 of CAL. CODE REGS., tit. 15 § 3005(b), in relation to the August 17, 2013 interview he  
6 conducted regarding Canada's CDC 128-A chrono and Plaintiff's CDCR Form 602  
7 Appeal Log No. 13-1451. *See* Pl.'s Opp'n (ECF No. 34), Ex. 2 at 105-112. Clarke  
8 reported that during his August 17, 2013 interview, Plaintiff told him "he did not  
9 recognize any CDCR staff's authority to prevent him from obtaining" the religious or  
10 "controlled" artifacts he had been "banned" from "obtaining, transporting or having  
11 in his possession," and therefore he "intended to keep on taking possession of them at  
12 future times as he saw fit." *Id.* at 105. Based on these statements, on September 1,  
13 2013, Correctional Lieutenant Sosa found Plaintiff guilty of the disciplinary offense  
14 of disobeying orders, assessed Plaintiff 30 days credit forfeiture, and referred him to  
15 the UCC/ICC for placement into privilege/work group "C." *Id.* at 108.

16 Second, Plaintiff filed CDCR 602 Log No. 13-3017 on September 22, 2013,  
17 challenging his guilt finding in CDC 115 Log No. FC-13-446. *Id.* at 100. In this  
18 appeal, Plaintiff repeated his claims that he was entitled to possess his own  
19 "personal" religious based on a "higher authority," alleged there was insufficient  
20 evidence to show he had disobeyed any orders, claimed he was denied due process,  
21  
22  
23

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24 <sup>12</sup> While the Second Level Appeal Decision in CDCR Form 602 RJD Log No.  
25 13-2451 dated August 19, 2013, indicates that "this issue may be submitted for a  
26 Director's Level of Review if desired," *see* Pl.'s Opp'n (ECF No. 34) Ex. 1 at 55,  
27 Plaintiff does not allege to have appealed further, and he has not submitted a copy of  
28 any Director's Level Decision as to Log No. 13-2451. In his Declaration in Support  
of Defendants' Motion, however, Briggs avers that Plaintiff did attempt to further  
appeal RJD Log No. 13-2451 on October 24, 2013, but it was "rejected or screened  
out" on November 15, 2013, "because the issue was exhausted at the Second Level of  
review." *See* Briggs Decl. (ECF No. 32-4) ¶ 10(d) at 7; *see also* CAL. CODE REGS., tit.  
15 § 3084.7(b)(1).

1 and also claimed that “the basis of [Clarke’s] RVR [was] retaliatory in nature,” and  
2 constituted a “reprisal[] for filing 602’s per 15 CCR § 3084.1(d).” *Id.* at 101.

3 Defendant Allamby interviewed Plaintiff at the second level of administrative  
4 review of CDCR Form 602 Log No. 13-3017 on November 4, 2013. However, it was  
5 RJD’s Chief Deputy Warden K.A. Seibel who found no evidence of any due process  
6 violation “relative to RVR Log No. FC-13-466,” and who denied Plaintiff’s appeal at  
7 the second level of administrative review. *Id.* at 102-04. On April 15, 2014, however,  
8 Appeal Log No. 13-3107 was granted in part by Defendant Pool at the third level of  
9 administrative review. *Id.* at 98-99. Specifically, RVR Log No. FC-13-446 was  
10 ordered to be “reissued/reheard” in order to ensure RJD officials fully complied with  
11 CAL. CODE REGS., tit. 15 § 3320(l), which required the Senior Hearing Officer (Lt.  
12 Sosa) to conclude the hearing by informing Plaintiff of the findings and disposition of  
13 the charge. *Id.* at 99. At neither the second or third levels of administrative review did  
14 any official address the claims of retaliation Plaintiff included in his CDCR Form 602  
15 Log No. 13-3107; instead only Plaintiff’s due process claims were considered. *See id.*  
16 at 98-112.

### 17 3. Analysis

18 Based on the evidence as presented, no genuine material dispute exists as to  
19 whether Plaintiff has properly exhausted all available administrative remedies as to  
20 the retaliation claims alleged in Claim Six of his Complaint. Defendants have  
21 produced sufficient evidence to show that he has not; and Plaintiff has failed to  
22 “come forward with evidence” to show “that there is something in his particular case  
23 that made the existing and generally available administrative remedies effectively  
24 unavailable to him.” *Albino*, 747 F.3d at 1172; *Williams*, 775 F.3d at 1191.

25 Specifically, the Court finds that while Plaintiff points to both CDCR Log No.  
26 13-2451 and CDCR Form 602 Log No. 13-3017 to show proof of exhaustion, those  
27 grievances clearly involve alleged incidents of retaliation, first arising on August 1,  
28 2013, and again on August 20, 2013, which even when considered in the light most

1 favorable to Plaintiff, are simply not alleged to be part of the retaliation claims he  
 2 asserts in *this* suit.<sup>13</sup> See *Albino*, 747 F.3d at 1166 (noting that if “undisputed evidence  
 3 viewed in the light most favorable to the prisoner shows a failure to exhaust, a  
 4 defendant is entitled to summary judgment under Rule 56.”); see also *Rhodes v.*  
 5 *Robinson*, 621 F.3d 1002, 1005 (9th Cir. 2010) (“[A] prisoner must exhaust his  
 6 administrative remedies *for the claims contained within his complaint* before that  
 7 complaint is tendered to the district court.”) (emphasis added).

8 Moreover, while both of Plaintiff’s CDCR Form 602 Log Nos. 13-2451 and  
 9 13-3017 did include allegations of retaliation based on the exercise of Plaintiff’s First  
 10 Amendment rights, neither included sufficient detail to put the Defendants in *this*  
 11 case (Carter, Rutledge, Allamby, Paramo, Benyard, and Ruffino) “on notice” of  
 12 Plaintiff’s specific claims of retaliation against them, nor provided prison officials a  
 13 fair opportunity to address or resolve his retaliation claims against these Defendants  
 14 prior to court intervention. See e.g., *McCollum v. Cal. Dept. of Corr. and*  
 15 *Rehabilitation*, 647 F.3d 870, 876 (9th Cir. 2011) (finding Wiccan prisoner’s  
 16 grievance alleging religious discrimination in the form of unequal access to worship  
 17 places and sacred items was insufficient to put prison officials on notice of Plaintiff’s  
 18 separate challenge to the prison’s failure to establish a paid Wiccan chaplaincy).

19 The level of detail in an administrative grievance necessary to properly exhaust  
 20 a claim is determined by the prison’s applicable grievance procedures. *Jones*, 549  
 21 U.S. at 218. The California Code of Regulations requires that Plaintiff’s CDCR Form  
 22 602s “list all staff members involved,” and “describe their involvement in the issue  
 23 under appeal,” including the “dates of the staff member’s involvement.” CAL. CODE

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24  
 25 <sup>13</sup> The Court takes judicial notice, however, that RJD CDCR Form 602 Log  
 26 Nos. 13-2451 and 13-3017 *do* appear to exhaust Plaintiff’s claims of retaliation  
 27 against Lt. Allamby, as well as against two other RJD Lieutenants, Canada and  
 28 Clarke, who are *not* named as parties in this case, but who are all named as parties in  
 Plaintiff’s related suit, *Avery v. Allamby, et al.*, S.D. Cal. Civil Case No. 13-cv-3169-  
 BTM (DHB). See *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (A court  
 “may take notice of proceedings in other courts, both within and without the federal  
 judicial system, if those proceedings have a direct relation to matters at issue.”)  
 (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

1 REGS. tit. 15, § 3084.2(3). Further, he must “describe the specific issue under appeal  
 2 and the relief requested,” and “state all facts known and available to him.” *Id.*  
 3 3084.2(a), (a)(4).<sup>14</sup> An appeal generally “suffices to exhaust a claim if it puts the  
 4 prison on adequate notice of the problem for which the prisoner seeks redress.” *Sapp*  
 5 *v. Kimbrell*, 623 F.3d 813, 822-23 (9th Cir. 2010).

6 The primary purpose of a grievance is to notify the prison of a problem. *Griffin*,  
 7 557 F.3d at 1120 (quotation marks and citations omitted); *accord Wilkerson v.*  
 8 *Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014); *Akhtar v. Mesa*, 698 F.3d 1202, 1211  
 9 (9th Cir. 2012). Thus, Plaintiff’s CDCR 602 Log. Nos. 13-2451 and 13-3017 would  
 10 suffice to satisfy § 1997e(a)’s exhaustion requirement if Defendants Carter, Rutledge,  
 11 Allamby, Paramo, Benyard, and Ruffino were included in a list of staff members  
 12 involved, if they “describe[d] their involvement in the issue under appeal,” and if they  
 13 included the dates of each staff member’s involvement. *See* CAL. CODE REGS. tit. 15,  
 14 § 3084.2. Because the undisputed evidence in the record before the Court shows that  
 15 Log. Nos. 13-2451 and 13-3017 lacked any of those required details, Defendants  
 16 Carter, Rutledge, Allamby, Paramo, Benyard, and Ruffino could not have been  
 17 alerted to the nature of the wrong for which Plaintiff now seeks redress against them.  
 18 *See Sapp*, 623 F.3d at 824; *Akhtar*, 698 F.3d at 1211.

## 19 **V. Conclusion and Order**

20 Accordingly, the Court **ORDERS** that:

21 1) No genuine dispute exists to show Plaintiff properly exhausted the  
 22 retaliation claims alleged in Claim Six of his Complaint; therefore, Defendants’  
 23 Motion for Summary Judgment as to those claims is **GRANTED** pursuant to  
 24 FED.R.CIV.P. 56 and 42 U.S.C. § 1997e(a) (ECF No. 32);

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25  
 26 <sup>14</sup> Before January 28, 2011, CDCR’s regulations merely required prisoner to  
 27 include a description of the problem and the action requested on the CDCR Form  
 28 602. *See* § 3084.2(a) (2010); *Sapp*, 623 F.3d at 824 (finding that at the time *Sapp*  
 filed his grievance, 15 CAL. CODE REGS., § 3084.2 did not require him to identify  
 prison officials by name in order to exhaust).



1           2)     Defendant John Does 1-10 are **DISMISSED** as parties in this matter sua  
2 sponte pursuant to FED.R.CIV.P. 4(m); and

3           3)     Defendants are **ORDERED** to file a responsive pleading to all claims  
4 remaining in Plaintiff's Complaint within the time provided by FED.R.CIV.P.  
5 12(a)(4)(A).

6  
7 DATED: August 18, 2015

8   
9 BARRY TED MOSKOWITZ, Chief Judge  
10 United States District Court  
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